



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-78,805-01

EX PARTE RICKEY DALE DUCKETT, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 2007F00211 IN THE 5TH DISTRICT COURT
FROM CASS COUNTY**

Per curiam.

ORDER

Pursuant to the provisions of Article 11.07 of the Texas Code of Criminal Procedure, the clerk of the trial court transmitted to this Court this application for a writ of habeas corpus. *Ex parte Young*, 418 S.W.2d 824, 826 (Tex. Crim. App. 1967). Applicant pleaded guilty to sexual assault of a child, and was sentenced by the trial court to twenty years' imprisonment. He did not appeal his conviction.

Applicant contends, *inter alia*, that he was denied due process and that trial counsel rendered ineffective assistance because Applicant agreed to enter a negotiated plea of guilty to sexual assault of a child in exchange for a six-year sentence. Applicant alleges that on the date of the plea, the trial court and the attorneys changed the plea to an open plea to the trial court. Applicant alleges that he

was not advised of this change, and was not given the opportunity to withdraw his guilty plea. The trial court sentenced Applicant to twenty years' imprisonment.

Applicant has alleged facts that, if true, might entitle him to relief. *Strickland v. Washington*, 466 U.S. 668 (1984); *Ex parte Patterson*, 993 S.W.2d 114, 115 (Tex. Crim. App. 1999). In these circumstances, additional facts are needed. As we held in *Ex parte Rodriguez*, 334 S.W.2d 294, 294 (Tex. Crim. App. 1960), the trial court is the appropriate forum for findings of fact. The trial court shall order trial counsel to respond to Applicant's claim of ineffective assistance of counsel. The trial court may use any means set out in TEX. CODE CRIM. PROC. art. 11.07, § 3(d).

If the trial court elects to hold a hearing, it shall determine whether Applicant is indigent. If Applicant is indigent and wishes to be represented by counsel, the trial court shall appoint an attorney to represent Applicant at the hearing. TEX. CODE CRIM. PROC. art. 26.04.

The trial court shall first supplement the habeas record with the plea papers, including admonishments, stipulations and waivers, and any judicial confession signed by Applicant. The trial court shall make findings of fact as to whether Applicant signed the plea papers with the understanding that he was entering a negotiated plea to an agreed sentence. If the plea papers correctly reflect that the recommendation of six years' imprisonment was changed to an open plea to the trial court, the trial court shall make findings as to how and when the change transpired, and as to whether Applicant was admonished as to the consequences of entering an open plea. If the change came as the result of the trial court's decision not to follow a negotiated plea agreement, the trial court shall make findings as to whether Applicant was given the opportunity to withdraw his plea. The trial court shall make findings of fact and conclusions of law as to whether Applicant's plea was knowingly and voluntarily entered, and as to whether the performance of Applicant's trial

counsel was deficient and, if so, whether counsel's deficient performance prejudiced Applicant. The trial court shall also make any other findings of fact and conclusions of law that it deems relevant and appropriate to the disposition of Applicant's claim for habeas corpus relief.

This application will be held in abeyance until the trial court has resolved the fact issues. The issues shall be resolved within 90 days of this order. A supplemental transcript containing all affidavits and interrogatories or the transcription of the court reporter's notes from any hearing or deposition, along with the trial court's supplemental findings of fact and conclusions of law, shall be forwarded to this Court within 120 days of the date of this order. Any extensions of time shall be obtained from this Court.

Filed: January 30, 2013
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